

AMENDED IN SENATE MAY 5, 1998

**SENATE BILL**

**No. 1511**

---

**Introduced by Senator Haynes**

(Principal coauthor: Assembly Member Olberg)

**(Coauthor: Senator Rainey)**

(Coauthors: Assembly Members Ackerman, Baldwin,  
Bordonaro, Campbell, *Granlund*, Leach, Margett, Morrow,  
Oller, Richter, and Woods)

February 6, 1998

---

An act to amend Section *128.6 of, and to amend and repeal Section 128.7* of, the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 1511, as amended, Haynes. Civil procedure: sanctions.

Existing law requires every pleading, petition, written notice of motion, or other similar paper to be signed by the attorney of record, or if a party is unrepresented, by the party, thereby certifying to the best of the person's knowledge, information, and belief that it is not being presented for an improper purpose, as specified, and that the claims, defenses, legal, and factual contentions are warranted, as specified. Existing law provides that trial courts may impose sanctions upon attorneys, law firms, or parties that violate these provisions in a complaint, petition, or other paper filed after January 1, 1995, and also provides for the repeal of these provisions as of January 1, 1999.

This bill would ~~delete~~ extend the repeal ~~provision, thus~~ extending the provision indefinitely date of these provisions to January 1, 2003.

Existing law, operative January 1, 1999, contingent upon the repeal of the first specified provision, provides that every trial court may order a party, the party's attorney, or both to pay reasonable expenses, including attorney's fees, incurred by another party as a result of a bad faith action or tactic that is frivolous or solely intended to cause unnecessary delay.

This bill would instead provide for this provision to become operative as of January 1, 2003, if the first described provision is repealed as of that date.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 128.6 of the Code of Civil  
2 Procedure is amended to read:

3 128.6. (a) Every trial court may order a party, the  
4 party's attorney, or both to pay any reasonable expenses,  
5 including attorney's fees, incurred by another party as a  
6 result of bad-faith actions or tactics that are frivolous or  
7 solely intended to cause unnecessary delay. This section  
8 also applies to judicial arbitration proceedings under  
9 Chapter 2.5 (commencing with Section 1141.10) of Title  
10 3 of Part 3.

11 (b) For purposes of this section:

12 (1) "Actions or tactics" include, but are not limited to,  
13 the making or opposing of motions or the filing and  
14 service of a complaint or cross-complaint. The mere filing  
15 of a complaint without service thereof on an opposing  
16 party does not constitute "actions or tactics" for purposes  
17 of this section.

18 (2) "Frivolous" means (A) totally and completely  
19 without merit or (B) for the sole purpose of harassing an  
20 opposing party.

21 (c) Expenses pursuant to this section shall not be  
22 imposed except on notice contained in a party's moving  
23 or responding papers; or the court's own motion, after

1 notice and opportunity to be heard. An order imposing  
2 expenses shall be in writing and shall recite in detail the  
3 conduct or circumstances justifying the order.

4 (d) In addition to any award pursuant to this section  
5 for conduct described in subdivision (a), the court may  
6 assess punitive damages against the plaintiff upon a  
7 determination by the court that the plaintiff's action was  
8 an action maintained by a person convicted of a felony  
9 against the person's victim, or the victim's heirs, relatives,  
10 estate, or personal representative, for injuries arising  
11 from the acts for which the person was convicted of a  
12 felony, and that the plaintiff is guilty of fraud, oppression,  
13 or malice in maintaining the action.

14 (e) The liability imposed by this section is in addition  
15 to any other liability imposed by law for acts or omissions  
16 within the purview of this section.

17 (f) This section shall become operative on January 1,  
18 ~~1999~~ 2003, unless a statute that becomes effective on or  
19 before this date extends or deletes the repeal date of  
20 Section 128.7.

21 *SEC. 2.* Section 128.7 of the Code of Civil Procedure  
22 is amended to read:

23 128.7. (a) Every pleading, petition, written notice of  
24 motion, or other similar paper shall be signed by at least  
25 one attorney of record in the attorney's individual name,  
26 or, if the party is not represented by an attorney, shall be  
27 signed by the party. Each paper shall state the signer's  
28 address and telephone number, if any. Except when  
29 otherwise provided by law, pleadings need not be  
30 verified or accompanied by affidavit. An unsigned paper  
31 shall be stricken unless omission of the signature is  
32 corrected promptly after being called to the attention of  
33 the attorney or party.

34 (b) By presenting to the court, whether by signing,  
35 filing, submitting, or later advocating, a pleading,  
36 petition, written notice of motion, or other similar paper,  
37 an attorney or unrepresented party is certifying that to  
38 the best of the person's knowledge, information, and  
39 belief, formed after an inquiry reasonable under the  
40 circumstances, all of the following conditions are met:

1 (1) It is not being presented primarily for an improper  
2 purpose, such as to harass or to cause unnecessary delay  
3 or needless increase in the cost of litigation.

4 (2) The claims, defenses, and other legal contentions  
5 therein are warranted by existing law or by a nonfrivolous  
6 argument for the extension, modification, or reversal of  
7 existing law or the establishment of new law.

8 (3) The allegations and other factual contentions have  
9 evidentiary support or, if specifically so identified, are  
10 likely to have evidentiary support after a reasonable  
11 opportunity for further investigation or discovery.

12 (4) The denials of factual contentions are warranted  
13 on the evidence or, if specifically so identified, are  
14 reasonably based on a lack of information or belief.

15 (c) If, after notice and a reasonable opportunity to  
16 respond, the court determines that subdivision (b) has  
17 been violated, the court may, subject to the conditions  
18 stated below, impose an appropriate sanction upon the  
19 attorneys, law firms, or parties that have violated  
20 subdivision (b) or are responsible for the violation. In  
21 determining what sanctions, if any, should be ordered,  
22 the court shall consider whether a party seeking sanctions  
23 has exercised due diligence.

24 (1) A motion for sanctions under this section shall be  
25 made separately from other motions or requests and shall  
26 describe the specific conduct alleged to violate  
27 subdivision (b). Notice of motion shall be served as  
28 provided in Section 1010, but shall not be filed with or  
29 presented to the court unless, within 30 days after service  
30 of the motion, or such other period as the court may  
31 prescribe, the challenged paper, claim, defense,  
32 contention, allegation, or denial is not withdrawn or  
33 appropriately corrected. If warranted, the court may  
34 award to the party prevailing on the motion the  
35 reasonable expenses and attorney's fees incurred in  
36 presenting or opposing the motion. Absent exceptional  
37 circumstances, a law firm shall be held jointly responsible  
38 for violations committed by its partners, associates, and  
39 employees.

(2) On its own motion, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b), unless, within 30 days of service of the order to show cause, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected.

(d) A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(1) Monetary sanctions may not be awarded against a represented party for a violation of paragraph (2) of subdivision (b).

(2) Monetary sanctions may not be awarded on the court's motion unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(e) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

(f) In addition to any award pursuant to this section for conduct described in subdivision (b), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

1 (g) This section shall not apply to disclosures and  
2 discovery requests, responses, objections, and motions.

3 (h) A motion for sanctions brought by a party or a  
4 party's attorney primarily for an improper purpose, such  
5 as to harass or to cause unnecessary delay or needless  
6 increase in the cost of litigation, shall itself be subject to  
7 a motion for sanctions. It is the intent of the Legislature  
8 that courts shall vigorously use its sanctions authority to  
9 deter such improper conduct or comparable conduct by  
10 others similarly situated.

11 (i) This section shall apply to a complaint or petition  
12 filed on or after January 1, 1995, and any other pleading,  
13 written notice of motion, or other similar paper filed in  
14 such a matter.

15 (j) *This section shall remain in effect only until*  
16 *January 1, 2003, and as of that date is repealed, unless a*  
17 *later enacted statute, that is enacted before January 1,*  
18 *2003, deletes or extends that date.*

